IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.16688 OF 2006

AND

WP.MP.NO.1457 OF 2007

T.Ambaritcha Maharaja ...Petitioner

Vs.

1. Additional Director General of Police,
   Chennai 600 004.

2. Inspector General of Police,
   Central Region,
   Trichy.

3. Deputy Inspector General of Police,
   Trichy Range,
   Trichy.

4. Superintendent of Police,
   District Police Office,
   Karur. .... Respondents

This petition came to be numbered by transfer of O.A.No.4174 of 2003 from the file of the Tamil Nadu Administrative Tribunal, praying this Court to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the third respondent herein in his proceedings in C.No.B3/Rev.14/2003 dated 26.5.2003 and to quash the same with all consequential service benefits.

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For Petitioner: Mr.G.Bala
For Respondents: Mr.V.Arun
Additional Government Pleader

O R D E R

Initially, the petitioner has filed O.A.No.4174 of 2003 on the file of Tamil Nadu Administrative Tribunal challenging the order of the

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third respondent dated 26.05.2003 and subsequently the same has been transferred to the file of this Court and renumbered as W.P.No.16688 of 2006.

2. The Court heard the learned counsel on either side.

3. Affidavit filed in support of the petition is perused.

4. Admittedly the petitioner joined the police service as Grade II Police Constable on 13.08.1978 and he was promoted as Grade I Police Constable in the year 1994. In the month of October 2001, while he was deputed to District Armed Reserve, Trichy for Special Training, a criminal case came to be registered against him in Crime No.234 of 2001 under Section 75 of MCP Act and 4(1)(j) of TNP Act. The petitioner was arrested and released on bail. A certificate was issued by the Medical Officer to the effect that the petitioner was not under the influence of alcohol. An order was passed by the Commissioner of Police, Trichy City on 11.03.2002 dropping the above criminal case registered against the petitioner. Accordingly, the criminal proceedings came to an end. Subsequently, a charge memo was served upon him in P.R.43/2002 under Rule 3(b) of TNPSS Rules dated 12.06.2002. He has submitted his explanation to the charge memo. But, the fourth respondent, not convinced with the explanation, ordered oral enquiry and appointed the Deputy Superintendent of Police, Kulithalai as enquiry officer and the Deputy Superintendent of Police has conducted an enquiry and gave a report stating that the charges framed against the petitioner were not proved. Following the same, the fourth respondent, viz., Superintendent of Police, Karur also passed an order stating that the enquiry officer has rightly held that the charges framed against the petitioner were not proved and accordingly, the petitioner was under the impression that the entire proceedings were over. While the matter stood thus, the third respondent viz., Deputy Inspector General of Police, Trichy Range, Trichy took up the matter suo motu review and issued show cause notice dissenting with the findings of the enquiry officer and the decision of the disciplinary authority by holding the charges against the petitioner as proved, based on mere presumption and assumption. Under such circumstances, the third respondent imposed a major punishment of "Compulsory Retirement". Aggrieved over the punishment imposed by the third respondent, the petitioner submitted an appeal to the second respondent. Since the writ petition has been filed, no order was served upon the petitioner, but an order came to be passed by the first respondent rejecting the appeal by an order dated 7.1.2004. Under such circumstances, this writ petition has been brought forth before this Court.

5. Learned counsel appearing for the petitioner raised two contentions viz., firstly when there was a criminal case registered against the petitioner under Section 75 MCP Act and 4(1)(j) of TNP Act and the Commissioner of Police, Trichy City had dropped the entire proceedings, since the allegations were found to be false and in the

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domestic enquiry conducted, the Deputy Superintendent of Police, Kulithalai was the enquiry officer who on enquiry gave a report that the charges framed against the petitioner are not proved and it was approved by the fourth respondent viz. the Superintendent of Police, Karur, the matter should have been come to an end. But, the third respondent, viz. Deputy Inspector General of Police, Trichy Range, Trichy took up the matter suo motu and he has passed an order, as if the charges levelled against the petitioner were proved and he set aside the orders of the authorities below and further imposed the punishment of compulsory retirement which is illegal and once an order was passed by the enquiry officer and approved by the fourth respondent viz., Superintendent of Police, Karur, there was no reason either to take up the matter suo motu or to pass an order of punishment of compulsory retirement. Secondly, even if it was taken suo motu, notice should have been given to the petitioner calling for explanation, conduct an enquiry and thereafter only he has to pass suitable orders. But in the instant case, it was not done so. Thus, all would go to show that the orders passed by the third respondent is not correct and the same has got to be set aside .

6. Contrary to the above contentions, learned counsel for the respondents would submit that it is true that the enquiry officer, the Deputy Superintendent of Police, Kulithalai has given a report stating that the charges not proved and it is also true that it was approved by the fourth respondent, but the procedure requires that final order has to be passed by the third respondent, viz.,Deputy Inspector General of Police, Trichy Range, Trichy and when the matter was taken up before the third respondent, he found that the enquiry officer has passed the order, based on mere presumption and assumption and hence it has to be set aside. After assessing the evidence available on record, he has taken the view that the Department has proved the charges levelled against the petitioner and further the third respondent has also taken into account the antecedents of the petitioner that he was suspended thrice and eleven punishments were given to him, out of which three were major punishments. Under such circumstances, in the interest of the social order, it is not proper to continue the petitioner in the said post and hence he thought it fit to pass an order of compulsory retirement. Hence the order of the third respondent has got to be sustained.

7. The Court paid its anxious consideration on the rival submissions made. After looking into the materials available on record. this Court is of the considered opinion that the order of compulsory retirement has got necessarily to be set aside. It is not in controversy that the criminal case came to be registered against the petitioner, when he was deputed to District Armed Reserve, Trichy and subsequently the Commissioner of Police, Trichy has dropped the criminal case registered against the petitioner. But,this Court cannot go into the merit of the matte. It is brought to the notice of the

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Court that the criminal case registered against him was dropped and the same order was passed in the domestic enquiry. The Deputy Commissioner has actually conducted enquiry, and passed an order stating that the charges levelled against him were not proved and thereafter placed before the fourth respondent. The fourth respondent also concurred with the view taken by the Deputy Superintendent of Police, Therefore, the criminal proceedings came to an end. But, at the same time, the procedure requires that the matter must be placed before the third respondent for passing final orders. Even assuming so, the third respondent had no material to come to a contrary conclusion from the one taken by the enquiry officer and which was subsequently approved by the Superintendent of Police. Now. the order which is under challenge does not speak about the antecedents of the petitioner that he was suspended thrice and he was imposed with 11 punishments, out of which, three are major punishments, but it was added in the affidavit filed in support of the petition. In order to sustain the order which was already passed by the Department by giving a punishment to a person by adding reasons when the matter is placed before this Court, cannot be countenanced in law. The enquiry officer has given a clear case that charges were not proved. Under such circumstances, the order of the enquiry officer that the charges were not proved and subsequently affirmed by the Superintendent of Police, the fourth respondent should have to be sustained by the third respondent. Hence, this Court is of the considered opinion that the order of the third respondent is un-called for, in view of the fact that except the charges that were levelled against him and that was found to be not proved, there is no reason for the Department to impose a punishment of compulsory punishment. Now, it is brought to the notice of the Court by the respondents that 11 punishments were awarded and out of which, three are major and the petitioner was suspended thrice, that is why the third respondent has imposed the punishment of compulsory retirement by passing the final orders. Under such circumstances, before passing the final order of compulsory retirement, the petitioner should be given an opportunity, but it was not done so for a long period. Therefore, this Court is of the considered opinion that the matter need not be remitted back to the third respondent for the purpose of re-enquiry. In a case like this where a person was compulsorily retired, his services should be restored . In the absence of the same, the question of sustaining the order of the third respondent would arise . Hence, the order of the third respondent is liable to be set aside and accordingly set aside with a direction to reinstate the petitioner herein with all consequential benefits, as expeditiously as practicable, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

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8. With the above observation, the writ petition is disposed of. No costs. Consequently, WP.MP.NO.1457 OF 2007 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

VJY
To
1. Additional Director General of Police,
Chennai 600 004.

2. Inspector General of Police,
Central Region,
Trichy.

3. Deputy Inspector General of Police,
Trichy Range,
Trichy.

4. Superintendent of Police,
District Police Office,
Karur.

+1cc to M/s. G.Bala & Daisy Sr 59973
+1cc to Govt. Pleader Sr 60471

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